

ALD-307

September 13, 2018

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

C.A. No. **18-2641**

IN RE: KEVIN MCKEITHER, Petitioner U.S.D.C. E.D. OF PA. CASE #14cv1628 - FILE

Present: MCKEE, VANASKIE and SCIRICA, Circuit Judges

Submitted is Petitioner's application pursuant to 28 U.S.C. § 2244(b) to file a second or successive petition under 28 U.S.C. § 2254 in the above-captioned case.

Respectfully,  
Clerk

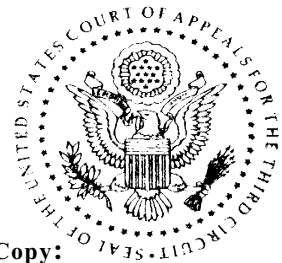
ORDER

Petitioner's application under 28 U.S.C. § 2244(b) for permission to file a second or successive habeas petition pursuant to 28 U.S.C. § 2254 is denied. Petitioner may not bring claims 1 through 3 because they were presented in his original § 2254 petition. See 28 U.S.C. § 2244(b)(1) (Any "claim presented in a second or successive habeas corpus application under [§] 2254 that was presented in a prior application shall be dismissed."). Although claim 4 was not raised in his initial petition, Petitioner has not made a prima facie showing that this claim relies on newly discovered evidence or "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." See 28 U.S.C. § 2244(b)(2). Petitioner relies on facts that were previously available to him, and, to the extent that he relies on Martinez v. Ryan, 566 U.S. 1 (2012), he does not meet § 2244(b)(2)'s standard, since Martinez did not announce a new rule of constitutional law. See Cox v. Horn, 757 F.3d 113, 124 (3d Cir. 2014); Martinez, 566 U.S. at 16 (noting that the Court's ruling was equitable).

By the Court,

s/Anthony J. Scirica  
Circuit Judge

Dated: December 12, 2018  
Tmm/cc: Kevin McKeither  
Jennifer O. Andress, Esq.



A True Copy:

*Patricia A. Dodszeuweit*

Patricia S. Dodszeuweit, Clerk